

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090383
	:	TRIAL NO. ooTRD-50432A
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
CATHERINE BROWNING,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On October 24, 2000, defendant-appellant Catherine Browning was cited for resisting arrest in violation of R.C. 4513.36 and for driving left of center in violation of Cincinnati Municipal Code 506.73. Browning subsequently pleaded no contest to driving left of center, and the trial court found her guilty. The trial court dismissed the resisting-arrest charge.

In March 2009, Browning filed an application to seal the record of the dismissed charge. Following a hearing, the trial court denied her application. Browning now appeals.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In a sole assignment of error, Browning argues that the trial court erred in denying her application to seal the record for the dismissed charge.

The trial court's denial was based upon the language in R.C. 2953.61 and 2953.36. R.C. 2953.61, which is entitled "Sealing of records in cases of multiple charges," provides that "when a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the other charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of his record in any of the cases until such time as he would be able to apply to the court and have all of the records in all of the cases pertaining to those charges sealed pursuant to divisions (A)(1) and (A)(2) of Section 2953.32 and divisions (A)(1) and (A)(2) of section 2953.52 of the Revised Code."

R.C. 2953.36 further provides that "[s]ections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following: * * * (B) Convictions under * * * Chapter * * * 4511 * * * of the Revised Code or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters."

The trial court held that because Browning had been convicted of driving left of center in violation of Cincinnati Municipal Code 506-73, which is substantially similar to R.C. 4511.29, R.C. 2953.36 prohibited it from sealing the record of the left-of-center conviction. It then held that because R.C. 2953.36 prohibited the sealing of the record for that conviction, it had no authority, under the plain language of R.C. 2953.61, to seal the record for the dismissed charge of resisting arrest.

The trial court stated that its statutory interpretation was consistent with a decision by the Eleventh Appellate District in *State v. Selesky*.² In that case, the

² 11th Dist. No. 2008-P-0029, 2009-Ohio-1145.

defendant, who had been charged with both failure to control in violation of R.C. 4511.202 and failure to stop after an accident in violation of R.C. 4549.02, entered a no-contest plea to the failure-to-control charge.³ The trial court found the defendant guilty of the failure-to-control charge and dismissed the remaining charge.⁴ The defendant then moved to seal the record of the dismissed charge, which the trial court granted.⁵ The state appealed.⁶ The Eleventh Appellate District reversed the trial court's decision.⁷ It held that because the defendant had been convicted of failure to control, which was not an expungeable offense under R.C. 2953.36, R.C. 2953.61 precluded the trial court from sealing the record of the dismissed charge.⁸

In this appeal, Browning does not take issue with the plain language of R.C. 2953.61 or the holding in *Selesky*. Rather, she points out that she would have been eligible under R.C. 2953.31 to apply to seal the record of the resisting-arrest charge, regardless of whether she had been convicted of the offense, had the left-of-center conviction been based on an act separate from the resisting-arrest charge, but that because the left-of-center conviction arose from the same act as the resisting-arrest charge, she was prohibited from doing so under R.C. 2953.61. She argues that this statutory inconsistency means that we must resort to the legislative history behind the statutes. Her argument is based upon the reasoning in *In re Hankins*.⁹ In that case, the Tenth Appellate District, after reviewing the legislative history behind the expungement statutes, held in a two-to-one decision that the legislature did not intend for a defendant's speeding conviction to

³ Id. at ¶2.

⁴ Id.

⁵ Id. at ¶¶3-13.

⁶ Id. at ¶¶1 and 14.

⁷ Id. at ¶¶16-20.

⁸ Id.

⁹ (May 18, 2000), 10th Dist. No. 99AP-797.

bar him from applying for the expungement of an open-container charge that had been dismissed under R.C. 2953.61.¹⁰

But after reviewing the case law and the applicable statutes, we must agree with the dissent in *In re Hankins* and with the Eleventh Appellate District in *Selesky*. Because “the language of the applicable statute, R.C. 2953.61, is not ambiguous, however unfortunate or illogical a result that mandates,” there is no need to resort to a consideration of legislative intent.¹¹ As a result, we overrule Browning’s sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 17, 2010
per order of the Court _____.
Presiding Judge

¹⁰ Id.

¹¹ Id.